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Mental Health: Administration I.

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A LEGISLATIVE SNAPSHOT OF 1979 STATE ENACTMENTS RELATING TO MENTAL HEALTH FACILITIES AND COMMUNITY CARE

By : Judith Regner

Many current state laws relating to mental health facilities and services reflect the state's attempts to implement the policy of community based care.

The current trend toward community based care of mentally ill persons actually began to gain force 20 years ago with the 1961 publication of the Report of the Joint Commission on Mental Illness and Health. The Commission placed strong emphasis on the need for the development of community based services, and the concept has remained a national priority. Implementation of the policy, however, has been hindered by various snags in the system. A major drawback has been the lack of residential facilities to offer alternatives to long term institutional care. Even supportive and rehabilitative services necessary to ensure that residential care in the community is a better treatment alternative, rather than just a different one, have often been lacking. Just moving patients from one setting to another without availability of follow-up services is not sufficient.

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Financing has been another problem area. For one thing, the process of deinstitutionalization has freed up less funding than was anticipated. It is true that Medicare and SSI have helped enable some people to reside in the community. In many cases, however, Medicare and other third party payors have defeated this principle by covering only care in the most restrictive setting, and failing to reimburse community services. The 1978 Report of the President's Commission on Mental Health acknowledges the funding problems for residential care by pointing out the need for a national policy to alter the balance of expenditures to divert them from institutions into the community.

One minor step in the right direction on the federal level is that the 1979 Food Stamp Amendments provide eligibility for food stamps for persons in small group homes who are eligibile for SSI or SSDI.

Also on a national level, the proposed Mental Health Systems Act of 1979 continues to advocate the development of community based services for the chronically mentally ill population, and adheres to the policy of care in the least restrictive setting.

At the state level, many states are enacting laws geared towards the further development of community based care.

In 1979 at least eighteen states and the District of Columbia passed laws relating to mental health treatment facilities or services. CALIFORNIA was the most prolific with five enactments having direct bearing on mental health facilities and community care.

Three of the five CALIFORNIA Acts address themselves to the issue of payment for residential, community care. CALIFORNIA SB 951 provides for rates to be based on functional ability and programmatic needs. This recognizes the needs of the younger more active population currently being placed in residential care, and provides financial incentives for caretakers to give more than just custodial care. The CALIFORNIA Senate Concurrent Resolution #22 requests a study of current rate setting procedures. This is designed to equalize the system of payments and ensure uniformity of standards and quality of care for community care facilities administered and supervised by a variety of state and county agencies. CALIFORNIA ASSEMBLY BILL 1037 is an attempt to support independent living as another viable residential alternative to institutionalization. This Act facilitates the transition from an institution to the community by requiring

a housing assistance program. The program is to be tied in with local supportive services and, as part of an overall plan for independent living, is a recognition that just meeting the residential needs is not enough.

The other state to respond to the funding aspects of residential care was NEW YORK. The NEW YORK legislature made a change in its Social Service Law to allow additional payments for mentally disabled children in residential care. This increase makes the rate for children in residential placement equal to that for adults in similar settings.

An ALABAMA Act provides for the sale of construction bonds to increase the number of residential care facilities for disabled persons.

Six states enacted laws that focus more on the delivery of services. CALIFORNIA Assembly Bill 1320, for instance, requires that residential treatment programs be incorporated into the County Short-Doyle plans. Criteria for the programs are set forth in the legislation and include some innovative requirements. For example, the use of paraprofessionals and persons who have been consumers of mental health services is required. Also, the use of psychiatric medication as a primary treatment tool is discouraged. This is interesting in view of the fact that the use of such medication has been a large factor in both the conceptualization and the realization of community based care. Another feature of this Bill is that it requires a case management system.

CALIFORNIA SB 950 deals exclusively with the establishment of the case management system. The case manager is defined as both a coordinator and an advocate. The goal of such a system is to reduce rehospitalization for long term mentally disordered persons.

Case managers are also referred to in a 1979 ILLINOIS Bill. This Bill establishes a pilot project to demonstrate the effectiveness of a comprehensive continuum of community residential alternatives for mentally ill persons. A 1979 OREGON Bill is very similar to ILLINOIS's Bill. It allocates funds for model programs to provide a wide range of services for chronically mentally ill persons, including the implementation of a case management system.

Case managers are also referred to in a 1979 ILLINOIS Bill. This Bill establishes a pilot project to demonstrate the effectiveness of a comprehensive continuum of community residential alternatives for mentally ill persons, including the implementation of a case management system.

A look at residential facilities is authorized by NEVADA legislation. A study commission is directed to focus on services provided and the financial problems of the private providers of care. The Commission is also authorized to evaluate the need for more facilities.

A CONNECTICUT Bill designed to increase the availability of community service permits state operated mental health facilities to establish clinics and day treatment centers.

Surprisingly, only three states had 1979 enactments relating to licensing of residential care facilities. A NEW HAMPSHIRE Bill amends existing law by changing the word institution to facility. As a result, a license is required in New Hampshire for any facility that houses mentally disabled persons. UTAH HOUSE BILL 128 provides for standard setting and licensing of residential mental health care programs by the Board of Mental Health. A MARYLAND Act is concerned with the regulation and licensing of private group homes for mentally ill persons. The statute emphasizes a homelike environment. For the purpose of zoning, private group homes are treated as single family residences. A 1979 IDAHO law also classifies homes for the care of eight or fewer as single family dwellings and establishes a state policy that mentally ill or physically disabled persons are entitled to live in normal residential surroundings.

In the DISTRICT OF COLUMBIA, a 1979 MAYOR'S ORDER reacts to the influx of community care facilities by limiting their placement to one per square block, unless special approval is granted.

On the subject of patient's rights, a 1979 MAIN law extends all rights currently afforded to patients in institutions to patients in residential care facilities.

Several state legislatures addressed the issue of outpatient services -- necessary components of community based care -- in 1979. In NEW YORK, S 1728 gives the Commission of Mental Hygiene authority to establish a schedule of rates for inpatient and outpatient services. Rates for inpatient services must be designed to assume "maximum recovery" of costs. Rates for outpatient services, however, need not reflect actual costs.

A 1979 WASHINGTON law provides an exemption from normally required fees for services to children in community mental health programs. The exemption is allowed only when the services are provided in cooperation with a school district.

Licensing of outpatient mental health clinics is referred to by COLORADO and LOUISIANA enactments in 1979. Both require adherence to minimum standards for a clinic to attain or retain its license. COLORADO requires applicants for licenses to furnish evidence of fitness to maintain a clinic. The rules and regulations that must be complied with are set forth in another section of the law. The 1979 LOUISIANA law states that failure to comply with the standards and regulations is grounds for denial, revocation or non-renewal of a license.

At least two states, ARKANSAS and MAINE, responded to the need for private funding for community-based services in 1979. MAINE's Act requires that coverage for outpatient community mental health services be made available in group health care policies and contracts at the option of the insured, ARKANSAS mandates that all group or individual medical insurance policies cover services provided by licensed outpatient psychiatric centers.

In spite of the emphasis on community based care and the increase in residential alternatives, large numbers of persons continue to receive care and treatment from large state institutions. In 1979, at least five states enacted laws pertaining to the cost of care in mental hospitals. 1979 laws passed in both GEORGIA and VIRGINIA are concerned with relatives' liability. The GEORGIA Act defines who is liable, provides authority for the Department of Mental Health and Mental Retardation to conduct investigations to determine ability to pay, allows access to income tax records and establishes billing and collection procedures. In VIRGINIA, parents, spouses and adult children of a patient are legally liable for payment for expenses for state hospital care.

New CONNECTICUT legislation provides that the daily cost of care for persons on state mental health facilities will be determined at least annually by the Comptroller in consultation with the Commissioner of Mental Health. NEW YORK law, as mentioned on page 3, allows additional payments for mentally disabled children receiving residential care. Finally, an IOWA Act enables persons under twenty one or over sixty-five to receive medical assistance when hospitalized for mental problems

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The Intergovernmental Health Policy Project has full text copies of each of the enacted state laws relating to Mental Health Facilities and Community Based Care. They are available upon request. (Please enclose a self-addressed lable -- it is extremely helpful to our staff.)

State-by-State Summary of 1979 Enactments Relating to Mental Health Facilities and Community Care

Note: Every attempt was made to be as comprehensive as possible in listing current state laws relating to Mental Health Facilities and Community Care. Omissions may occur, however. The Intergovernmental Health Policy Project would appreciate receiving information about further developments.

Alabama: H282

This Act is an attempt to alleviate the shortage of care facilities including those for mentally ill persons, by increasing the supply of investment funds through the sale of state bonds. Facilities for the mentally ill are defined in this Act to encompass all types, from hospitals to residences.

This lengthy statute contains definitions of terms and detailed procedures for carrying out its provisions.

Arkansas: HB 936 - Act 803

This Act mandates that all group or individual medical insurance policies cover services provided by licensed outpatient psychiatric centers.

California: SB 950 Ch.815

The intent of this Bill is to encourage the development of case management systems for high risk mentally disordered clients. The goal is the reduction of hospitalizations.

The Department of Mental Health is required to define the target population and develop guidelines by April 1, 1980.

The case management systems are to be implemented by county governments. They must meet minimum criteria set forth in this Bill, including an annual evaluation process. The case manager's duties include functioning in the roles of both coordinator and advocate.

County Short-Doyle plans are required to include provisions for the implementation of a case management system by July 1, 1980.

California: SB 951

This Bill requires the Department of Mental Health to establish a system of equitable Mental Health payments and rates for mentally disordered persons residing in private residential facilities. The rates will be based on the resident's functional ability and programmatic needs. In its statement of findings, the Legislature declares that the patient population has changed dramatically in recent years, becoming younger and much more active. The current rate structure is insufficient because it is not based on the needs of this population.

Annually established rates must include payment for basic living needs, indirect costs of managing a facility,

improvements and equipment, and supervision, and must reflect differences in cost of living for different geographic areas. The rate of payment can never exceed the average amount charged to private clients or the average monthly cost of services for persons with mental disabilities who reside in state hospitals.

Maximum utilization of existing funding sources must occur prior to the commitment of state funds to local programs.

Each county must include provisions for the adjusted rates as part of the Short-Doyle plan. Responsibility for certifying facilities, making payments and evaluating eligibility of each facility rests with the county.

California: Senate Concurrent Resolution #22

This Resolution responds to the fragmented system of rate setting for community care facilities by requesting that the Senate Health and Welfare Committee contract for a study of rate setting procedures and make recommendations to provide greater equity. This applies to facilities serving the mentally disordered, developmentally disabled, dependent children, and aged persons.

The legislature allocated $135,000 for the study, and a final report is due in one year.

California: AB 1037 Ch. 1154

The intent of this law is to provide housing assistance to mentally disordered and developmentally or physically disabled persons to provide a transition from an institution to an independent setting.

The Department of Housing and Community Development is required to establish a housing assistance program and contract with local agencies for the provision of supportive services. Local agencies must ensure that recipients are income-qualified under Federal guidelines. In the application procedure, local agencies must indicate that housing assistance payments are part of an ongoing program to establish independent living for disabled clients. Local agencies cannot contract for rental in one structure of more than twelve units, or space for more than twenty-four persons, and a client is limited to eighteen months on a payment-assisted unit.

A total of $250,000 is appropriate to establish this program.

California: AB 1320

The intent of this law is to establish residential treatment programs to provide a range of alternatives to institutional care, based on principles of community-based treatment.

Criteria for the programs include:

- Settings that are non-institutional, preferably fifteen beds or less;
- Staffing patterns that reflect the cultural characteristics of the community;
- Use of multidisciplinary professional consultations and staff;
- Use of paraprofessionals and persons who have been consumers of mental health services;
- Reduction of dependence on psychiatric medications as a primary treatment tool;
- Focus on developing self sufficiency and participation of clients in the operation of the program; and
- Coordination with other community resources.

Counties must also have a crisis unit and a case management system as part of their existing services or may apply for additional funds if necessary.

Grants will be made to counties to contract for services. To avoid duplication of services, the programs must be incorporated into the comprehensive Short-Doyle plans required to be developed by each county to receive state mental health funding.

No local funding is required for the first year. In subsequent years, the percentage of local financial participation will be the same as is currently required for local Short-Doyle programs.

This law also establishes programs for children and adolescents that adhere to the same guidelines. In addition, these programs must:

- Be designed to reduce disruption and promote reintegration of the family unit;
- Have an educational focus; and

- Have a specific follow-up component.

Colorado: SB 36

This Act adds "clinic services" to the list of basic services provided to the categorically needy in Colorado's Medicaid program. It defines clinic services as preventative, diagnostic, therapeutic, rehabilitative, or palliative services provided to outpatients under medical direction in a community facility.

Evidence of compliance with standards, rules and regulations is required for licensure of a community mental health center or clinic, and subsequent reimbursement.

The state is required to establish a price schedule annually for the purpose of reimbursing community mental health center and clinic vendors, and reimbursement must be based on actual or reasonable cost.

Connecticut: Substitute SB 1443 - PA 79-443

This Act provides that the daily cost of care for persons in state mental health facilities will be determined at least annually by the Comptroller, in consultation with the Commissioner of Mental Health.

Connecticut: SB 1238
PA 79-19

This Act provides state-operated mental health facilities with the option to establish psychiatric clinics and day treatment programs for adults. Fees for these services are based on a sliding scale.

District of Columbia: Mayor's Order 79-243

This Order relates to the location of community-based residential facilities.

No facility housing six or more persons can be placed in a residential square where one presently exists without prior approval from the mayor. Approval will be granted only when other appropriate locations are not available and the placement of the facility will not cause adverse neighborhood impact.

Georgia: HB 55 - Act 505

This Act, entitled "The Patient Cost of Care Act", sets forth comprehensive standards related to the cost of care for patients in state hospitals. It defines who

is liable, provides authority to conduct investigations to determine ability to pay, allows access to income tax records, establishes billing and collection procedures, and sets forth other detailed provisions relating to payments for state-provided mental health care.

Idaho: HB 183

This Act establishes a state policy that mentally or physically disabled persons are entitled to live in normal residential surroundings. In addition, it defines the use of property for the care of eight or fewer persons as a residential use for the purpose of local zoning. Homes used for 8 or fewer disabled individuals must be classified as "single family dwellings", and may have no more than two staff in residence. The Department of Health and Welfare now requires a license, but no zoning clearances or no local restrictions may be applied unless they are required for all single family dwellings in the same zone.

Illinois: HB 1543

This Act establishes a pilot project to demonstrate the effectiveness of a comprehensive continuum of community residential alternatives for mentally ill persons. The project must emphasize care and treatment of the recidivistic and the long term institutionalized mentally ill, and must include a case coordinator system.

A progress report is due January 1, 1980.

Iowa: H File 677

This Act enables persons under twenty-one or over sixty-five, who are income eligible, to receive medical assistance (Medicaid) when hospitalized for mental illness.

Louisiana: SB 526 - Act 689

This Act provides for denial, revocation or non-renewal of a license for a mental health clinic for failure to meet minimum standards.

Maine: SP 466 - L.D. 1528 Ch 469

This Act extends the rights of patients in institutions to patients in residential care facilities. A residential care facility is defined as a licensed or approved boarding home, nursing care, or foster care facility which supplies supportive residential care to individuals due to their mental illness. The general rights include all civil rights. Any limitation of rights must be documented in the patient's record. The Department of Human

Services has the authority to control record keeping and reporting for residential care facilities.

Maine: HP 1121 - L.D. 1390

This Act requires that group health care policies and contracts include coverage for community mental health services, at the option of the insured.

Maryland: S #19 - Ch. 688

This Act is concerned with the regulation and licensing of private group homes for mentally ill persons. The focus is on creating homelike environments and when possible, placing people in their own community. Part of the license application process includes holding a public hearing to assure acceptance of the home in the community. Other considerations that must be taken into account are whether there is a need for such a home, the availability of transportation, and the location of other homes and correctional facilities.

Homes already in existence at the time of enactment must apply for a license within one year. Although newly established homes exclude persons with a primary diagnosis of alcoholism, drug abuse or severe brain damage, a home already in existence will not be denied a license on the basis of a resident having one of the diagnoses.

Licenses are granted for a two year period.

For zoning purposes, private group homes must be treated the same as a single family residence.

Nevada: Assembly Concurrent Resolution 51

This resolution directs the legislative commission to study and evaluate private providers of care, including adult group care homes.

The Commission is directed to look at levels of service provided, financial problems, and the need for more facilities, to determine if state reimbursement rates are sufficient to provide the desired level of care.

A report with recommendations will be presented to the 61st Session of the legislature.

New Hampshire: HB 149 Ch. 399

This Act establishes that a license is required for all health care facilities including any facility where

mentally disabled persons reside. Throughout the Act, the word "facilities" is substituted for "institutions", to encompass a broader range of types of facilities.

Application procedures and rules for licensing are included.

New York: S 1728 - Ch. 46

This Act amends the mental hygiene law in relation to fees for department services. The additions provide that the Commissioner may establish schedules of rates for in-patient services, reflecting the costs of service, care, treatment, maintenance, overhead, and administration, which assure maximum recovery of costs. The Commissioner may establish schedules for non-inpatient services which need not reflect the costs of services, care, treatment, maintenance, overhead and administration. All fee schedules established by the Commissioner are subject to the approval of the Director of the Division of the Budget.

New York: A7340-A Ch.278

This Act amends the social service law, to allow additional payments for mentally disabled children receiving residential care, by changing the wording from mentally disabled persons to mentally disabled adults and children. It provides the rates for children in residential care to be equal to the rates paid for adults in similar placements.

Oregon: HB 3132 - Ch. 784

The intent of this Bill is to provide a range of residential opportunities and support services for chronically mentally ill persons.

Funds are allocated for two service areas. The model programs include a provision for written discharge plans and the implementation of a case management system.

Utah: HB 128

This Act empowers the Board of Mental Health to license residential mental health care programs. To obtain a license these programs must meet standards established by the Board.

Virginia: H 1346 - Ch. 54

This Act relates to definitions in mental health laws. The definition of boarding homes is deleted and the definition of private institutions is amended to include facilities for the treatment of alcohol and drug addiction.

Virginia: H 1926 - Ch 669

This Act relates to payment of expenses for patients in state mental hospitals. It declares that parents, spouses and adult children of a patient are legally liable for the costs of care of close family members.

The Act also changes Medicaid eligibility definitions concerning patients under 21. As a result of the new law, parents of a patient under twenty-one years of age are liable only to the extent that the care and treatment is covered by their health insurance benefits.

Washington: Substitute HB 1347

This Act provides a fee exemption for services by community mental health programs to children, when the services are part of a cooperative program with the school district.

Intergovernmental Health Policy Project

The Intergovernmental Health Policy Project serves a unique function in the development of the nation's health policy. It is the only university-based program in the country concentrating its research efforts exclusively on the health laws and programs of the 50 state governments. The Project provides assistance to state executive officials, legislators, legislative staff and others who need to know about important developments in other states. At the same time, the IHPP helps federal officials identify innovative state health programs and specific state problems.

To facilitate these information-brokering activities, the IHPP maintains direct links with state governments, state legislatures, research centers, planning agencies, and interest groups throughout the country. Reliable, up-to-date information on health legislation and programs is obtained through IHPP's own network of knowledgeable heath policy experts in each of the 50 states, as well as from its clearinghouse of all state health legislation.

Through its newsletter, *State Health Notes*, research publications, and conferences, the IHPP provides key health policy-makers with timely, comprehensive examinations of innovative state legislative activities and health programs.

The Intergovernmental Health Policy Project has a full-time staff of five professional researchers, supplemented by graduate research assistants and consultants. The publications, research and services of the IHPP are made possible by a grant from the Health Care Financing Administration, DHEW, to George Washington University. (HCFA Grant #18-P-27 321/3)

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